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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 RICHARD LEIDER,
12 Plaintiff,
13 v.
14 SHERIFF GEOFF DEAN, *et al.*,
15 Defendants.

16 Case No. 2:18-cv-07336 CBM (MAA)

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18 **MEMORANDUM DECISION AND**
19 **ORDER DISMISSING**
20 **COMPLAINT WITH LEAVE TO**
21 **AMEND**

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23 **I. INTRODUCTION**

24 On August 21, 2018 Plaintiff Richard Leider (“Plaintiff”), an inmate at
25 Ventura County Jail, in Ventura, California (the “VCJ”), proceeding *pro se*, filed a
26 civil Complaint alleging violations of his Sixth¹ and Fourteenth Amendment rights,
27 which the Court interprets as claims brought pursuant to 42 U.S.C. § 1983 (“Section
28 1983”). (“Compl.” ECF No. 1.) Plaintiff names three defendants: Ventura County
Sheriff Geoff Dean (“Sheriff Dean”) in his official capacity, California Governor

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¹ Later in the Complaint, Plaintiff refers to violations of the Eighth (instead of Sixth)
31 and Fourteenth Amendments. (*See* Compl. at “5A.”) Until Plaintiff clarifies further
32 in response to this dismissal with leave to amend, the Court accepts Plaintiff’s claims
33 as violations of the Sixth, Eighth, and Fourteenth Amendments, but will refer to the
34 claim as alleged in the Complaint where applicable.

1 Jerry Brown (“Governor Brown”) in both his official and individual capacities, and
2 the State of California in its official capacity. The Court screened the Complaint as
3 prescribed by 28 U.S.C. § 1915A (“Section 1915A”) and 28 U.S.C. § 1915(e)(2)(B)
4 (“Section 1915(e)(2)(B”)), and, for the reasons stated below, DISMISSES the
5 Complaint as against Defendants Governor Brown and the State of California with
6 leave to amend.

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8 **II. ALLEGATIONS IN THE FAC**

9 Plaintiff alleges that the amendment to California Penal Code section 1170
10 (“Section 1170”) and the enactment of California Proposition 57 (“Prop 57”) have
11 created a sentencing disparity between non-violent felony offenders committed to
12 “felony jail” and those committed to State Prison. He avers that the non-violent
13 offenders committed to State Prison are eligible to (1) have their sentences reduced
14 by a higher percentage, and (2) earn more milestone credits than their counterparts in
15 County Jail. He further alleges that this disparity (1) violates the Eighth and
16 Fourteenth Amendments of the United States Constitution, and (2) renders
17 California Penal Code section 1170(h)(5)(B) (“Section 1170(h)(5)(B”)
18 unconstitutional. Plaintiff contends that Governor Brown and the State of California
19 enacted emergency legislation that created the sentencing disparity, and that Sheriff
20 Dean has custody and control over him². Based on these allegations, Plaintiff seeks
21 (1) a declaration that Section 1170(h)(5)(B) is unconstitutional; (2) costs of the
22 proceedings; (3) injunctive relief in the form of [i] a 66.7% reduction in his sentence,
23 [ii] a one-week reduction in his sentence for having attended counseling sessions,
24 [iii] a \$200.00 release fund payment; and (4) any further relief that the Court deems
25 proper. (Compl. at 1-6.)

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27 ² The Complaint alleges that Sheriff Dean has custody and control over “Defendant,”
28 which the Court interprets to mean “over the Plaintiff.” (Compl. at 3.)

1 **III. STANDARD OF REVIEW**

2 Federal courts must conduct a preliminary screening of any case in which a
3 prisoner seeks redress from a governmental entity or officer or employee of a
4 governmental entity (Section 1915A), or in which a plaintiff proceeds *in forma*
5 *pauperis* (Section 1915(e)(2)(B)). The court must identify cognizable claims and
6 dismiss any complaint, or any portion thereof, that is: (1) frivolous or malicious,
7 (2) fails to state a claim upon which relief may be granted, or (3) seeks monetary
8 relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915(e)(2)(B),
9 1915A(b).

10 When screening a complaint to determine whether it fails to state a claim upon
11 which relief can be granted, courts apply the Federal Rule of Civil Procedure
12 12(b)(6) (“Rule 12(b)(6)”) standard. *See Watison v. Carter*, 668 F.3d 1108, 1112
13 (9th Cir. 2012) (applying the Rule 12(b)(6) standard to Section 1915(e)(2)(B)(ii));
14 *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012) (applying the Rule 12(b)(6)
15 standard to Section 1915A). “Dismissal under Rule 12(b)(6) is appropriate only
16 where the complaint lacks a cognizable legal theory or sufficient facts to support a
17 cognizable legal theory.” *Hartmann v. Cal. Dep’t of Corr. & Rehab.*, 707 F.3d 1114,
18 1122 (9th Cir. 2013) (quoting *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d
19 1097, 1104 (9th Cir. 2008)).

20 Rule 12(b)(6) is read in conjunction with Federal Rule of Civil Procedure 8(a)
21 (“Rule 8”), which requires that a complaint contain “a short and plain statement of
22 the claim showing that the pleader is entitled to relief.” *See Li v. Kerry*, 710 F.3d
23 995, 998 (9th Cir. 2013). In reviewing a motion to dismiss, the court will accept
24 factual allegations as true and view them in the light most favorable to the plaintiff.
25 *See Park v. Thompson*, 851 F.3d 910, 918 (9th Cir. 2017) (citing *N.M. State Inv.*
26 *Council v. Ernst & Young LLP*, 641 F.3d 1089, 1094 (9th Cir. 2011)). Although
27 “detailed factual allegations” are not required, “[t]hreadbare recitals of the elements
28 of a cause of action, supported by mere conclusory statements, do not suffice.”

1 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “Conclusory allegations of law . . . are
2 insufficient” *Park*, 851 F.3d at 918 (first ellipsis in original) (quoting *Lee v.*
3 *City of L.A.*, 250 F.3d 668, 679 (9th Cir. 2001)). Rather, a complaint must “contain
4 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible
5 on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S.
6 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual
7 content that allows the court to draw the reasonable inference that the defendant is
8 liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 662. “If there are two
9 alternative explanations, one advanced by defendant and the other advanced by
10 plaintiff, both of which are plausible, plaintiff’s complaint survives a motion to
11 dismiss under Rule 12(b)(6).” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

12 Where a plaintiff is *pro se*, particularly in civil rights cases, courts should
13 construe pleadings liberally and afford the plaintiff any benefit of the doubt. *See*
14 *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012). “[B]efore dismissing a pro
15 se complaint the district court must provide the litigant with notice of the deficiencies
16 in his complaint in order to ensure that the litigant uses the opportunity to amend
17 effectively.” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (quoting *Ferdik v.*
18 *Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)). A court should grant a *pro se*
19 plaintiff leave to amend a defective complaint “unless it is absolutely clear that the
20 deficiencies of the complaint could not be cured by amendment.” *Akhtar*, 698 F.3d
21 at 1212.

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23 IV. DISCUSSION

24 A. **The Complaint Fails to State Constitutional Claims Against**
25 **Defendant State of California.**

26 Plaintiff asserts Sixth, Eighth, and Fourteenth Amendment claims against
27 Defendant State of California in its official capacity. However, constitutional claims
28 cannot be asserted against the State of California because a state is not a “person”

1 subject to liability under Section 1983. *See Will v. Mich. Dep’t of State Police*, 491
2 U.S. 58, 71 (1989). In addition, states are protected by the Eleventh Amendment
3 from suits in federal court, unless a state waives Eleventh Amendment immunity or
4 Congress abrogates it. *See Douglas v. Cal. Dep’t of Youth Auth.*, 271 F.3d 812, 817
5 (9th Cir. 2001). “The State of California has not waived its Eleventh Amendment
6 immunity with respect to claims brought under § 1983 in federal court, and the
7 Supreme Court has held that § 1983 was not intended to abrogate a State’s Eleventh
8 Amendment immunity.” *Brown v. Cal. Dep’t of Corr.*, 554 F.3d 747, 752 (9th Cir.
9 2009). For this reason, the constitutional claims against Defendant State of
10 California are fatally flawed and cannot proceed. If Plaintiff intends to file a First
11 Amended Complaint, he must correct this deficiency or risk dismissal without leave
12 to amend.

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14 **B. The Complaint Fails to State Constitutional Claims Against
15 Defendant Governor Brown.**

16 Plaintiff asserts Sixth, Eighth, and Fourteenth Amendment claims against
17 Defendant Governor Brown in both his individual and official capacities.

18 The individual capacity claim against Governor Brown is improper. “It is well
19 established that federal, state, and regional legislators are entitled to absolute
20 immunity from civil liability for their legislative actions.” *Bogan v. Scott-Harris*,
21 523 U.S. 44, 46 (1998). Legislative immunity also extends to members of the
22 executive branch, and applies to claims for damages and claims for injunctive relief.
23 *Cnty. House, Inc. v. City of Boise, Idaho*, 623 F.3d 945, 959 (9th Cir. 2010).

24 Plaintiff alleges that Governor Brown enacted the legislation that created the
25 sentencing disparity. (Compl. at 3.) As such, legislative immunity shields Governor
26 Brown from liability in his individual capacity. *See Bd. of Cty. Comm’rs v. Umber*,
27 518 U.S. 668, 677 n.1 (1996) (“[I]mmunity from suit under § 1983 extends to public
28 servants only in their *individual* capacities . . .”).

1 Official capacity suits “generally represent only another way of pleading an
2 action against an entity of which an officer is an agent.” *Kentucky v. Graham*, 473
3 U.S. 159, 165 (1985) (quoting *Monell v. Dep’t of Social Servs.*, 436 U.S. 658, 690
4 n.55 (1978)). Read broadly, the Complaint alleges that Defendant Governor Brown
5 is an employee of the State of California – “Defendant Governor Jerry Brown resides
6 or works at 300 S. Spring St., Los Angeles, CA 90012.” (Compl. at 3.) As such, the
7 official capacity claims against Defendant Governor Brown are properly treated as
8 claims against the State of California. *See Los Angeles Branch NAACP v. Los*
9 *Angeles Unified Sch. Dist.*, 714 F.2d 949, 952 (9th Cir. 1983) (explaining that lawsuit
10 against governor in official capacity was “in essence, brought against the state entity
11 of which the officer is an agent.”).

12 As explained above, California is not a “person” subject to Section 1983, and
13 the Eleventh Amendment bars damages actions against state officials in their official
14 capacity. *Flint v. Dennison*, 488 F.3d 816, 824 (9th Cir. 2007). However, the
15 doctrine of *Ex Parte Young*, 209 U.S. 123 (1908) – that the Eleventh Amendment
16 does not bar suits for prospective declaratory or injunctive relief against state
17 officials in their official capacity – is a well-recognized exception to the general
18 prohibition of the Eleventh Amendment. *See Flint*, 488 F.3d at 825. Still, the *Ex*
19 *Parte Young* doctrine only applies where the official has “some connection with the
20 enforcement of the act, or else it is merely making him a party as a representative of
21 the State, and thereby attempting to make the State a party.” *Ex Parte Young*, 209
22 U.S. at 157. That connection “must be fairly direct; a generalized duty to enforce
23 state law or general supervisory power over the persons responsible for enforcing the
24 challenged provision will not subject an official to suit.” *Coalition to Defend*
25 *Affirmative Action v. Brown*, 674 F.3d 1128, 1134 (9th Cir. 2012) (quoting *Los*
26 *Angeles County Bar Ass’n v. March Fong Eu*, 979 F.2d 697, 704 (9th Cir. 1992)).
27 Although Plaintiff seeks declaratory and injunctive relief, the Complaint contains no
28 allegations of Governor Brown’s connection with the enforcement of Prop 57. *See*

1 *Nat'l Conf. of Pers. Managers, Inc. v. Brown*, 690 Fed. Appx. 461, 462 (9th Cir.
2 2017) (“The Governor is responsible for executing and enforcing the laws of
3 California, but the general enforcement of laws does not establish the ‘requisite
4 enforcement connection’ to overcome sovereign immunity.”) As currently pleaded,
5 the *Ex Parte Young* exception would not apply to abrogate Governor Brown’s
6 Eleventh Amendment immunity.

7 For these reasons, the Sixth, Eighth, and Eleventh Amendment claims against
8 Defendant Governor Brown in both his official and individual capacities are
9 improper. If Plaintiff intends to file a First Amended Complaint, he must correct this
10 deficiency or risk dismissal without leave to amend.

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12 V. CONCLUSION

13 For the reasons stated above, the Complaint is dismissed with leave to amend.
14 If Plaintiff still wishes to pursue this action, he shall file a First Amended Complaint
15 within **thirty (30) days** after the date of this Order. The First Amended Complaint
16 must cure the pleading defects discussed above and shall be complete in itself
17 without reference to the Complaint. *See L.R. 15-2* (“Every amended pleading filed
18 as a matter of right or allowed by order of the Court shall be complete including
19 exhibits. The amended pleading shall not refer to the prior, superseding pleading.”).
20 This means that Plaintiff must allege and plead any viable claims in the First
21 Amended Complaint again. Plaintiff shall not include new defendants or new
22 allegations that are not reasonably related to the claims asserted in the Complaint.

23 In any amended complaint, Plaintiff should confine his allegations to those
24 operative facts supporting each of his claims. Plaintiff is advised that pursuant to
25 Federal Rule of Civil Procedure 8(a), all that is required is a “short and plain
26 statement of the claim showing that the pleader is entitled to relief.” **Plaintiff**
27 **strongly is encouraged to utilize the standard civil rights complaint form when**
28 **filing any amended complaint, a copy of which is attached.** In any amended

1 complaint, Plaintiff should identify the nature of each separate legal claim and make
2 clear what specific factual allegations support each of his separate claims. Plaintiff
3 strongly is encouraged to keep his statements concise and to omit irrelevant details.
4 It is not necessary for Plaintiff to cite case law, include legal argument, or attach
5 exhibits at this stage of the litigation. Plaintiff also is advised to omit any claims for
6 which he lacks a sufficient factual basis.

7 **The Court explicitly cautions Plaintiff that failure to timely file a First**
8 **Amended Complaint, or failure to correct the deficiencies described above, will**
9 **result in a recommendation that this action, or portions thereof, be dismissed**
10 **with prejudice for failure to prosecute and/or failure to comply with court**
11 **orders pursuant to Federal Rule of Civil Procedure 41(b).**

12 If Plaintiff no longer wishes to pursue this action in its entirety or with respect
13 to particular Defendants or claims, he voluntarily may dismiss all or any part of this
14 action by filing a Notice of Dismissal in accordance with Federal Rule of Civil
15 Procedure 41(a)(1). **A form Notice of Dismissal is attached for Plaintiff's**
16 **convenience.**

17 Plaintiff is advised that this Court's determination herein that the allegations in
18 the Complaint are insufficient to state a particular claim should not be seen as
19 dispositive of the claim. Accordingly, although the undersigned Magistrate Judge
20 believes Plaintiff has failed to plead sufficient factual matter in the pleading,
21 accepted as true, to state a claim for relief that is plausible on its face, Plaintiff is not
22 required to omit any claim or defendant in order to pursue this action. However, if
23 Plaintiff decides to pursue a claim in an amended complaint that the undersigned
24 previously found to be insufficient, then pursuant to 28 U.S.C. § 636, the
25 undersigned ultimately may submit to the assigned District Judge a recommendation

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1 that such claim may be dismissed with prejudice for failure to state a claim, subject to
2 Plaintiff's right at that time to file objections. *See* Fed. R. Civ. P. 72(b); C.D. Cal.
3 L.R. 72-3.

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5 **IT IS SO ORDERED.**

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7 DATED: October 10, 2018

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MARIA A. AUDERO
UNITED STATES MAGISTRATE JUDGE

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